



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1997

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR97-0498

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104510.

The City of DeSoto (the "city"), which you represent, received several open records requests for copies of the attorney fee bills created by various law firms in connection with the firms' representation of the city and of city officials in their official capacities. You state that because the city did not request an open records decision from this office within the ten days following the receipt of the initial requests, the city has released most of the requested information in accordance with section 552.302 of the Government Code.¹ You seek to withhold, however, small portions of two of the billing statements pursuant to section 552.101 because you believe the information implicates the common-law privacy interests

¹Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

of an individual. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. This office agrees that the information you have marked implicates the privacy interest of a third party. Assuming the subject matter of the information has not been disclosed in public court documents, the city must withhold this information pursuant to section 552.101 of the Government Code. *But see Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records generally not protected by common-law privacy).

The open records requests also encompass the attorney fee bills of an attorney who is representing various city officials in their individual capacities. You contend that these records are not subject to the Open Records Act. You explain that although the city briefly possessed these records, the records are no longer in the city's actual possession. You further indicate that these particular records are not in the city's constructive possession. Section 552.002(a) of the Government Code provides:

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Because the records at issue are neither "collected, assembled, or maintained" by or for the city, we conclude that these records are not subject to the Open Records Act and thus need not be provided to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/rho

Ref.: ID# 104510

Enclosures: Submitted documents

cc: Mr. Durwood Davis
514 N. Hampton
DeSoto, Texas 75115
(w/o enclosures)